



October 9, 2000

Ms. Jennifer W. Jacobs  
Bracewell & Patterson L.L.P.  
Attorneys at Law  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR2000-3869

Dear Ms. Jacobs:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139974.

Brazosport College (the “college”), which you represent, received a request for information relating to the college’s Small Business Development Center (the “center”), including a list of all clients that have utilized the center. The college has released some of the requested information. The college claims, however, that the names and addresses of the center’s clients are excepted from disclosure under sections 552.101, 552.110, and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the materials relating to the center that you submitted.<sup>1</sup> We also received and have reviewed the comments that the requestor submitted to this office.

Initially, we must address your failure to submit to this office the information that the college seeks to withhold, as required by section 552.301 of the Government Code. Section 552.301 provides in relevant part that “[a] governmental body that requests an attorney general decision . . . must . . . not later than the 15<sup>th</sup> business day after the date of receiving the written request [for information] . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous

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<sup>1</sup>You have provided literature that states that the center provides “confidential” services. This office has long held that a governmental body’s promise to keep information that is subject to the Public Information Act confidential is not a basis for withholding that information from the public, unless the governmental body has specific statutory authority to keep the information confidential. *See* Open Records Decision Nos. 514 at 1 (1988), 479 at 1-2 (1987), 444 at 6 (1986). You do not inform us that the college has such authority. Furthermore, information that subject to the Act is not confidential simply because the party submitting the information anticipates or requests confidentiality. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

amount of information was requested[.]” Gov’t Code § 552.301(e)(1)(D). Section 552.302 provides as follows:

If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Section 552.301(d), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Gov’t Code § 552.302. Although you do not inform us of the date of the college’s receipt of the information request, it appears to have been transmitted to the college by facsimile on July 24, 2000. *See* Gov’t Code § 552.301(e)(1)(C). The college then had 15 business days, or until and including August 14, 2000, in which to submit to this office the information that the college seeks to withhold or representative samples of that information. The statutory 15-day period has expired. Therefore, as the college failed to comply with section 552.301(e)(1)(D) in requesting this ruling, the information requested in writing is presumed to be subject to required disclosure and must be released, unless there is a compelling reason to withhold any of that information from the public. Gov’t Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ).

As a general rule, a governmental body can rebut the statutory presumption of openness under section 552.302 by showing that the information at issue is deemed to be confidential under some other source of law or that the interests of third parties are at stake. *See* Open Records Decision No. 630 at 3 (1994). Thus, a demonstration that information is excepted from disclosure under sections 552.101, 552.110, or 552.114 may overcome the presumption under section 552.302 that the requested information must be released. *Id.* However, as you have not submitted the information in question to this office, we have no basis for finding that a compelling reason exists to withhold any of the requested information under any of these exceptions to disclosure. Thus, we have no choice but to order the information released pursuant to section 552.302. If you believe that the requested information is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below. We caution the college that chapter 552 of the Government Code makes the release of confidential information a criminal offense. *See* Gov’t Code §§ 552.101, .352.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

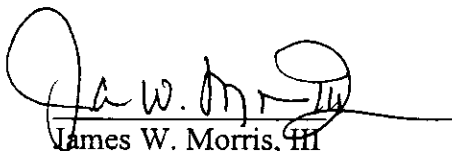
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a horizontal line drawn underneath it.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 139974

cc: Ms. Vickie Kaatz  
Four Seasons Windows & Doors  
152 Bastrop Street  
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